

**REQUEST FOR PROPOSALS**  
**NEW YORK STATE DEPARTMENT OF TRANSPORTATION** (on behalf of the)  
**NEW YORK METROPOLITAN TRANSPORTATION COUNCIL**  
**RFP #PSA5: 'CONSULTANT PLANNING SERVICE AGREEMENT for NYMTC'**  
**RFP Release Date: December 6, 2021**

**Question and Answers Pairs (Round 2)**  
**Released January 26, 2022**

### **RFP #PSA5 Information Location:**

**Question 49**            Please send us details on the RFP #PSA5.  
**Answer 49**            **All information related to the RFP #PSA5 may be found on the NYMTC and NYSDOT Project websites:**

**NYMTC:** <https://www.nymtc.org/UTILITY-MENU/Doing-Business/Current-RFPs>

**NYSDOT:** <https://www.dot.ny.gov/portal/page/portal/doing-business/opportunities/consult-opportunities>

### **Main Body of the RFP:**

#### **Section 5 'Proposal Content and Format'**

**Question 50**            When will the mySend invitation be sent out so firms can make sure materials are submitted prior to deadline? Are firms expected to send an additional email to Mr. Allen and Ms. Kappeller in addition to the already-submitted RFP #PSA5 Response Form?

**Answer 50**            **Proposers shall send one email to (Patricia.Kappeller@dot.ny.gov) and Seitu Allen (seitu.allen@dot.ny.gov) expressing their intent to submit their Proposal electronically at that time. NYSDOT Contract Management will then send the Proposer an invitation to mySend so the Proposer can upload their RFP submission files to the mySend site. This email will be in addition to any already submitted emails.**

**Question 51**            Regarding format of proposal documents: The response to Q11 in the Q&A Pairs (Round 1) indicates “proposers are required to submit both Word and PDF files for the Technical and Management Proposal and Administrative Proposal, and Excel and PDF files for the Cost Proposal.

a) The electronic submission file name nomenclature in Section 5.1 of RFP PSA5 Modification 1 includes “Cost Proposals Word Document: LOT# N\_CP\_FirmName.docx”. Please confirm that submitting Cost Proposals in Word is not required.

- b) The checklist for Part II requests the Cost Proposal in Excel format and does not specify PDF. Please clarify whether we should follow the directions in the response to Q11 or the directions in the Consultant Cost Proposal Submission Checklist.
- c) The checklist for Part III requests the Administrative Proposal in Adobe PDF format and does not specify Word. Please clarify whether we should follow the directions in the response to Q11 or the directions in the Consultant Administrative Proposal Submission Checklist.
  - a. If you are requesting the Administrative Proposal in Word format, please clarify how we are to do this, as the forms are provided to us in PDF and will be completed in PDF.

**Answer 51**

**Proposers are required to submit both Word and PDF versions of the Technical and Management Proposal; Section 1, Section 2, and Section 3 of the Cost Proposal; and the Administrative Proposal. Proposers are required to submit Excel and PDF versions of the Attachment 13: Cost Proposal.**

**Please note that all attachments, excluding the Attachment 13: Cost Proposal which is an Excel file, are available on the NYMTC and NYSDOT project websites in MS Word compatible formats within the RFP #PSA5 document. The RFP has been modified regarding this question.**

**Question 52**

Regarding the number of each document to be submitted: Section 5.5 of RFP PSA5 Modification 1 reads “Proposers shall submit one (1) complete electronic copy of the Part I – Technical and Management Proposal, one (1) complete electronic copy of the Part II – Costing Proposal, and one (1) complete electronic copy of the Part III - Administrative Submission.” Please clarify whether we are to submit one (1) of each document or two (2) of each document and the formats in which those documents should be provided.

**Answer 52**

**Proposers shall submit one (1) complete electronic copy of the Part I – Technical and Management Proposal, one (1) complete electronic copy of the Part II – Cost Proposal, and one (1) complete electronic copy of the Part III - Administrative Proposal in each of the indicated required formats. The RFP has been modified regarding this question.**

## Section 8 Attachments:

### Draft Contract

#### Question 53

Would NYSDOT advise if modifications to the sample contract may be made as shown below?

#### ARTICLE 11 – CONSULTANT LIABILITY

To the fullest extent permissible by law, the CONSUTLANT shall indemnify and save harmless, **but shall have no duty to defend**, the STATE, and any municipality, public benefit corporation, railroad, and/or public utility whose property or facilities are affected by the work, from ~~suits, claims, actions,~~ damages and costs, of every name and description arising from the work under its contract during its prosecution and until the final acceptance thereof **to the extent caused by the negligence of CONSULTANT or those for whom CONSULTANT is legally liable in connection with the CONTRACT**. The CONSULTANT and any assigns, heirs, or successors in interest shall also indemnify and save harmless, to the fullest extent permitted bylaw, the inspecting engineer or inspector working for the STATE relative to the PROJECT from suits, claims, actions, damages and costs involving personal injury and property damage ~~arising~~ **to the extent caused by** ~~from~~ the CONSULTANT'S **negligent** work under the CONTRACT during its prosecution and until the final acceptance thereof. The STATE may retain such monies from the amount due the CONSULTANT as may be necessary to satisfy any claim for damages recovered against the STATE, any municipality and/or public benefit corporation, railroad, or public utility whose property or facilities are affected by the work or consultant inspecting engineers or inspectors working for the STATE relative to the PROJECT. The CONSULTANT'S obligation under this paragraph shall not be deemed waived by the failure of the STATE to retain the whole or any part of such monies due the CONSULTANT, nor where such suit, action, damages and/or costs have not been resolved or determined prior to release of any monies to the CONSULTANT under the CONTRACT, nor shall such obligation be deemed limited or discharged by the enumeration or procurement if any insurance for liability for damages imposed by law upon the CONSULTANT, Subconsultant or any municipality and/or public benefit corporation, railroad, or public utility whose property or facilities are affected by the work, or for any consultants working for the STATE. It is understood by the STATE and the CONSULTANT that the CONSULTANT'S Professional Liability/Errors and Omissions Policy **if** required in the Article 12

-Insurance of this CONTRACT shall be utilized for claims involving the

CONSULTANT'S professional negligence.

~~The CONSULTANT has the obligation, at its own expense, for the defense of any action or proceeding which may be brought against the parties specified in this Section. This obligation shall include the cost of attorney's fees, disbursements, costs and other expenses incurred in connection with such action or proceeding. Such obligation to indemnify in the foregoing paragraph does not extend to those suits, action, damages and costs of every name that arise out of this sole negligence of the STATE, or negligence of any municipality and/or public benefit corporation, railroad, or public utility whose property or facilities are affected by the contract work, or the negligence of any consultants working for the STATE, their agents or employees, relative to the construction, alteration, or repair or maintenance of a building, highway, or structure or appurtenances and appliances thereof including moving, demolition and excavating connected therewith. Notwithstanding the foregoing, the parties being defended by the CONSULTANT may elect to join any action or tender their own defense, at their sole expense and discretion.~~

## ARTICLE 12 – INSURANCE

The CONSULTANT shall procure, at its own sole cost an expense, and shall maintain in force at all times during the term of the CONTRACT including any extensions or renewals until **reasonably** satisfactory completion of all work under the CONTRACT, the policies of insurance covering **all operations of Consultant** under the CONTRACT whether performed by it or its subconsultants as herein below set forth, written by companies authorized by the New York State Insurance Department to issue insurance in the State of New York and that have an A.M. Best Company rating of (A-) or better or approved by the DEPARTMENT. The DEPARTMENT may, at its sole discretion permit the placement of policies with a non-authorized carrier or carriers upon request by the CONSULTANT accompanied by the documentation required by 11 NYCRR §20.7 et seq., provided that nothing herein shall be construed to require the DEPARTMENT to accept insurance placed with a non-authorized carrier under any circumstances. ~~The CONSULTANT shall deliver to the DEPARTMENT evidence of such policies as the DEPARTMENT deems necessary to verify that the required insurance is in effect.~~ If policies are changed or canceled, the CONSULTANT shall inform the STATE immediately. The STATE will determine whether to issue an order to the CONSULTANT to stop work.

Conditions Applicable to Insurance. All policies of insurance required by this CONTRACT must meet the following requirements:

- A. Coverage Types and Policy Limits. The types of coverage and policy limits required from the CONSULTANT are specified in Section 2, Insurance Requirements, below. ~~General Liability insurance shall apply separately on a per job or per project basis.~~
- B. Policy Forms. Except as may otherwise specifically provided herein or agreed in writing by the DEPARTMENT, policies must be written on an occurrence basis, **except professional liability if required**. In the event that occurrence-based coverage is not commercially available, claims-made policy forms will be considered provided that, at a minimum, it includes provisions that allow for (a) reporting circumstances or incidents that may give rise to future claims and (b) an extended reporting of not less than three (3) years with respect to events that occurred but were not reported during the term of the policy. Insurance policies that remove or restrict blanket contractual liability located in the "insured contract" definition (as stated in Section V, Number 9, Item f of the ISO-GLC policy) or that remove or modify the "insured contract" exception to the employer's liability exclusion so as to limit coverage for claims that arise out of contract work, or that do not cover the additional insured for claims involving injury to employees of the named insured or subconsultants, are not acceptable. ~~Policy forms must be provided to the DEPARTMENT upon request.~~
- C. Certificates of Insurance/Notices. CONSULTANT shall provide a Certificate or Certificates of Insurance in a form **reasonably** satisfactory to the COMMISSIONER, before commencing any work under this CONTRACT. Certificates or transmittal correspondence shall reference the NYSDOT CONTRACT Number. CONSULTANT is strongly encouraged to transmit certificates and other materials concerning insurance coverage, reference **Contract #C\_** and the name of the CONSULTANT in the Subject Line, by email to: Insur.consult.contr@dot.ny.gov.

New York State Department of  
Transportation Office of  
Contract Management 50 Wolf  
Rd, 6<sup>th</sup> Floor Albany, NY 12232

Unless otherwise agreed, policies shall be written so as to require that the policy will not be (a) canceled, ~~(b) materially changed,~~ or (c) permitted to expire or lapse for any reason except upon ten (10) calendar days prior written notice to the DEPARTMENT ~~by Certified Mail, Return Receipt Requested at the address stated above. In addition, if required by the DEPARTMENT, the CONSULTANT shall deliver to the DEPARTMENT within ten~~

~~(10) business days of such a request a copy of or any or all policies of insurance not previously provided, certified by the insurance carrier as true and complete.~~ Certificates of Insurance shall:

1. Be in a form **reasonably** satisfactory to the DEPARTMENT. The ACORD 25 Certificate must be accompanied by an ACORD 855 "New York Construction Addendum" completed to indicate information about the liability insurance.
2. Be signed and dated by an authorized representative of the insurance carrier or producer.
- ~~3. Disclose any deductible, self-insured retention, aggregate limit.~~
4. Refer to this CONTRACT by number on the face of the certificate.

If at any time during the term of this CONTRACT, it shall come to the attention of the DEPARTMENT that required insurance is not in effect or that adequate proof of insurance has not been provided, the DEPARTMENT may, at its option:

1. Direct the CONSULTANT to suspend work and not to re-enter the premises with no additional payment or extension of time due on account thereof, or
2. May withhold further contract payments in accordance with Partial Payments, Section §109-04 of the Standard Specification, or
3. Treat such failure as a breach or default of the CONTRACT.

D. Additional Insureds. All insurance policies required by these specifications, except Workers' Compensation/**Employer's Liability**, NYS Disability and Professional Liability shall be endorsed to provide coverage to "The State of New York/New York State Department of Transportation, any municipality in which the work is being performed, any public benefit corporation, railroad, or public utility whose property or facilities are affected by the work, and their agents or employees" with respect to ~~any~~ **claims** arising from the CONSULTANT'S activities. The endorsement shall be affected by endorsement of the applicable policy using ISO form ~~CG 20 10 11 85, CG 20 37 07 04, CG 20 33 07 98 when used in combination with CG 20 10 and CG 20 37 07 04, or CG 20 33 10 01~~ for a form(s) that provides equivalent coverage.

E. Primary Coverage. The **General** liability ~~and protective liability~~ insurance policies shall provide primary and non-contributory coverage to the DEPARTMENT for any claim arising from the CONSULTANT'S work under this CONTRACT, or as a result of the CONSULTANT'S activities.

F. Waiver of Subrogation. **Except for Professional Liability**, ~~As to~~ every type and form of insurance coverage required from the

CONSULTANT, there shall be no right of subrogation against the State of New York/New York State Department of Transportation, its agents or employees. To the extent that any of the CONSULTANT'S policies of insurance prohibit such a waiver of subrogation, CONSULTANT shall secure the necessary permission to make this waiver.

G. Policy Renewal/Expiration. At least ten (10) calendar days ~~prior~~ **to** ~~after~~ the expiration of any policy required by this CONTRACT, evidence of renewal or replacement policies of such insurance with terms no less favorable to the DEPARTMENT than the expiring policies, **to the extent commercially available**, shall be delivered to the DEPARTMENT in the manner required for service of notice in Section C – Certificates of Insurance/Notices above.

~~H. Self-Insurance Retention/Deductibles. Consultants utilizing self-insurance programs are required to provide a description of the program for DEPARTMENT approval. Collateralized deductible and self-insured retention programs administered by a third party may be approved. Except as may be specifically provided in the CONTRACT documents of a particular project, the CONSULTANT or third-party administered insurance deductible shall be limited to the amount of the bid deposit of \$100,000, whichever is less. Security is not required if it is otherwise provided to an administrator or an approved risk management plan. The DEPARTMENT will not accept self-insured retention programs without security being posted to assure payment of both the self-insured retention limit and the cost of adjusting claims. The CONSULTANT shall be solely responsible for all claim expenses and loss payments within any permitted deductible or self-insured retention. If the CONSULTANT'S deductible in a self-administered program exceeds the amount of the bid deposit, the CONSULTANT shall furnish an irrevocable Letter of Credit as collateral to guarantee its obligations. Such Letter of Credit or other collateral as may be approved by the DEPARTMENT must be issued by a guarantor or surety with an A.M. Best Company rating of (A-) or better. If, at any time during the term of this CONTRACT, the DEPARTMENT, in its sole discretion, determines that the CONSULTANT is not paying its deductible, it may require the CONSULTANT to collateralize all or any part of the deductible or self-insured retention.~~

**Answer 53**

**The RFP's draft contract remains unchanged with regard to this question.**

Question 54      Regarding Article 35, please expand upon your definition of a “modification.” What is the extent to which changes to any software would be considered a “modification?” Would you please quantify what would be considered a modification?

**Answer 54      In Article 35, please see the definition of Software Modification, which shall: "...mean any products resulting from Integration Services, modification, tailoring, and or customization of Software excluding Maintenance Releases, Enhancements or New Versions, performed to Software by or on behalf of the Consultant for the Project as set forth in the Lots."**

Question 55      Appendix C refers to hiring and training requirements. These types of requirements are more typical for trades in the construction industry and construction related jobs. Would NYSDOT confirm if hiring and training requirements are inapplicable to Lots 2 and 3?

**Answer 55      In RFP Attachment 1, Draft Contract, all of Appendix C applies; Article 11 can be waived upon request.**

Question 56      Please confirm that Appendix D applies only to any new IT Project Development Work or any new IT application developed under this Agreement.

**Answer 56      As noted in the answer to Question #35, NYSDOT and NYMTC confirm that Appendix D applies to any new IT Project Development Work or any new IT application developed under this Agreement as well as to any IT-related work performed by the selected Consultant while under a resulting PSA5 contract. In addition, Appendix D covers all IT work performed by a vendor while under a state contract.**

#### Attachment 10

Question 57      May we recreate Attachment 10: Firm Experience form and Attachment 12: Key Personnel Experience in a MS Word format, in order to populate these forms? If recreating these forms in a word format is NOT acceptable, does NYMTC provide versions of these forms that are editable/populatable? Please clarify how we are to add information to these forms.

**Answer 57      As noted in the answer to Question #50, all attachments, excluding the Attachment 13: Cost Proposal, are available on the NYMTC and NYSDOT project websites in MS Word compatible formats within the RFP #PSA5 document.**



Question 58 We are reaching out regarding RFP #PSA5. As round 2 of questions are due on January 18th, our firm wanted clarification on the Requirement Description which states “Proposer has been in continuous operation for at least the past five (5) years” on page 99. We wanted to inquire if this is a firm requirement that the entity must have been in business for over 5 years. While our firm has been in continuous operation for 3 years, the relevant expertise of our staff greatly exceeds the five-year requirement. Would this qualify for RFP #PSA5?

**Answer 58 The RFP has been modified with regard to this question to reduce the continuous years of operation requirement to at least three (3) years. The RFP’s years of continuous operation requirement is firm.**

#### Attachment 12

Question 59 Can you please confirm that the Attachment 12s are only to be filled out up to "Staff Reference Check Evaluation Criteria" section by the submitting consultants, and per RFP page 23 "Reference Checks" NYMTC reserves the right to reach out any reference listed for verification during proposal evaluations?

**Answer 59 The RFP’s Attachment 12 are only to be fill out until the “Staff Reference Check Evaluation Criteria” section. All offered references shall be contacted via a standard reference check questionnaire and shall have three business days to respond. The RFP has been modified with regard to this question.**

#### Cost Proposal:

Question 60 We recognize that the Cost Proposal spreadsheet now includes this note: “10. The annual level of effort indicated in this cost proposal is for cost evaluation purposes only. The actual annual level of effort for Task Assignments under a PSA5 agreement for this Lot, by Job Category and Level, will be determined through negotiated Task Assignment Requests.”. Our question is during the negotiated Task Assignment Requests, will the Five-Year Total Value of the Cost Proposal be able to increase based on redistribution of hours to higher level staff?

**Answer 60 The Five-Year Total Value of the Cost Proposal is for cost evaluation purposes only. Based on historical and projected usage, each awarded Lot shall have an anticipated five-year Maximum Amount Payable, subject to NYMTC’s discretion. If a firm is awarded more than one Lot, then the five-year Maximum Amount Payable for the resulting contract will be the sum of the anticipated amounts for each lot awarded. Per Article 5 of the RFP, the maximum aggregate amount payable by the STATE to the CONSULTANT will be agreed upon for the performance and completion of the work under this agreement**

**unless increased by an awarded supplemental agreement. It is understood and agreed that the STATE will only reimburse the CONSULTANT for approved costs incurred in the performance of authorized project tasks.**

- Question 61      How do you suggest we show a subconsultant's loaded rates and overhead? The spreadsheet does not allow for additional rows to be added.
- Answer 61      **The offered not-to-exceed billing rates shall apply to all consultants and subconsultants, including any subconsultants added after contract award, participating in the performance of the scope of services for a Lot under a PSA5 agreement. Actual billing rates, for each firm participating in a Task Assignment, will be presented in the Task Assignment Request response.**
- Question 62      For the Cost Proposal spreadsheet, is the 2% annual escalation factor something that can be increased during the negotiated Task Assignment Requests?
- Answer 62      **No.**
- Question 63      For Lot 4, is the 3,000 hours per year estimate for level of effort something that can be revisited during the negotiated Task Assignment Requests if different staff levels are used than are shown in the Cost Estimate spreadsheet?
- Answer 63      **As presented in the answer to Question 40, the annual level of effort indicated in the Attachment 13: Cost Proposal, for each Job Category and Level, is for cost evaluation purposes only. The actual annual level of effort for Task Assignments under a PSA agreement for the Lot, by Job Category and Level, will be determined through negotiated Task Assignment Requests.**

**End of Round 2 Questions**

**REQUEST FOR PROPOSALS**  
**NEW YORK STATE DEPARTMENT OF TRANSPORTATION** (on behalf of the)  
**NEW YORK METROPOLITAN TRANSPORTATION COUNCIL**  
**RFP #PSA5: 'CONSULTANT PLANNING SERVICE AGREEMENT for NYMTC'**  
**RFP Release Date: December 6, 2021**

**Question and Answers Pairs (Round 1)**  
**Released January 11, 2022**

**Pre-proposal Webinar and RFP #PSA5 Information Location:**

**Question 1** After our quick review of the documents, we were not able to locate the Pre-Proposal Webinar-related information scheduled for 2pm on 12/15.

**Answer 1** **All information related to the RFP #PSA5 may be found on the NYMTC and NYSDOT Project websites:**

**NYMTC:** <https://www.nymtc.org/UTILITY-MENU/Doing-Business/Current-RFPs>

**NYSDOT:** <https://www.dot.ny.gov/portal/page/portal/doing-business/opportunities/consult-ads>

**The link to the pre-proposal webinar has been provided via the RFP #PSA5 RFP's Announcement #2.**

**Question 2** In addition, what about the pre-conference information for Consulting Planning Agreement posted on December 6, 2021?

**Answer 2** **Please see answer to Question #1.**

**Question 3** Good morning – My company would like to attend this webinar for RFP #PSA5 'CONSULTANT PLANNING SERVICE AGREEMENT for NYMTC': Pre-Proposal Webinar: Wednesday, December 15, 2021 at 2 PM Eastern Standard Time (EST)

**Answer 3** **Please see answer to Question #1.**

**Question 4** I would like to attend the webinar for preproposal information on the NYMTC PSA#5 scheduled for today. Can you please send me the details of the webinar?

**Answer 4** **Please see answer to Question #1.**

**Question 5** I missed the pre-proposal webinar. Is it possible to get a link to the recording?

**Answer 5** **Please see answer to Question #1.**

## Main Body of the RFP:

### Section 1 'Introduction'

**Question 6** What are the conditions to get an approved telework plan? Would you consider a hybrid model, with someone working remotely, but visiting NYMTC Central offices a predefined number of times, or as needed?

**Answer 6** **The conditions to get an approved telework plan for an on-site contractor will be established between the selected contractor and the NYMTC project manager. NYMTC will consider a hybrid model, with someone working remotely, but visiting NYMTC central offices a predefined number of times or as needed in accordance with the needs of specific Task Assignment requests under a PSA5 agreement.**

### Section 2 'Civil Rights Requirements'

**Question 7** Is there an established DBE participation percentage/goal?

**Answer 7** **While there are no civil rights goals associated with this procurement, NYSDOT and NYMTC encourage the participation of qualified DBE prime consultants for this contract opportunity.**

### Section 3 'Project Objectives'

**Question 8** Will adding subconsultants after a contract has been awarded be allowed.

**Answer 8** **Yes, provided that subconsultants added after contract award shall have comparable or higher technical quality at the same or lower cost and shall be subject to NYMTC/NYSDOT approval. The RFP has been modified with regard to this question.**

**Question 9** Could teaming partners be added after an award has been made ? ( this question was asked during the pre-proposal meeting)

**Answer 9** **Please see answer to Question #8.**

### Section 5 'Proposal Content and Format'

**Question 10** Regarding proposal delivery. Are we to upload to mySend and email all proposal sections (PDF & Word) per lot (potentially 36 files) or is it acceptable to upload individual section per lot via mySend (potentially 36 files) and email only composites of each lot (potentially 6 files)?

**Answer 10** **Proposers shall send one email to (Patricia.Kappeller@dot.ny.gov) and Seitu Allen (seitu.allen@dot.ny.gov) expressing their intent to submit their Proposal electronically at that time. NYSDOT Contract Management will then send the Proposer an invitation to mySend so the Proposer can upload their RFP submission files to the mySend site.**

**Proposers shall not email proposals to the Designated Contacts, directly. The RFP has been modified regarding this question.**

Question 11 Per Section 5.1, are proposers required to submit both Word and PDF files for the Technical and Management Proposal and Administrative Proposal, and Excel and PDF files for the Cost Proposal, or will one file type each suffice?

**Answer 11 Per Section 5.1, proposers are required to submit both Word and PDF files for the Technical and Management Proposal and Administrative Proposal, and Excel and PDF files for the Cost Proposal.**

Question 12 Can you confirm that both PDF and Word versions are required for all submissions?

**Answer 12 Please see answer for Question #11.**

Question 13 In Section 5.2 (Part I: Technical and Management Proposal), please clarify if consultant team qualifications are to be provided only on completed Attachment 10: Firm Experience forms.

**Answer 13 The proposing consultant firms' qualifications are to be provided using the Attachment 10: Firm Experience forms. The qualifications of individuals proposed for the consultant team are to be provided using Attachment 12: Key Personnel Experience.**

Question 14 In Section 5.2 (Part I: Technical and Management Proposal), please confirm that Attachment 12 is only to be completed for each Lot's Consultant Project Manager, and that for all other staff (Key Personnel), a standard resume is to be provided?

**Answer 14 Attachment 12 is to be completed for each lot's Consultant Project Manager and all other key personnel. A resume shall be provided for each Lot's Consultant Project Manager and a resume shall be provided for each Key Personnel. The RFP's Attachment 12 has been modified regarding this question.**

Question 15 In the Part II: Cost Proposal response, will NYMTC accept loaded home and field rates, without overhead and fee broken down?

**Answer 15 The RFP's Attachment 13: Cost Proposal has been modified such that proposers shall only offer fully loaded not-to-exceed home office and field office billing rates, without breaking out the direct labor cost, overhead rates, and fee that comprise the fully loaded billing rates.**

Question 16 Do rates need to be based on raw direct pay rate times overhead?

**Answer 16 Please see answer to Question 15.**

- Question 17 Can profit be applied to rate inclusive of overhead?  
**Answer 17 Please see answer to Question 15.**
- Question 18 Can a particular partner be presented as a vendor, in which case would they still be required to provide a breakdown of the cost components – salary, overhead and fee?  
**Answer 18 Please see answer to Question 15.**
- Question 19 If a subconsultant were to disclose cost information that they consider proprietary, could we request that their cost information be treated as proprietary and protected from public disclosure?  
**Answer 19 Per the RFP's section 5.3 'Part II: Cost Proposal', confidential and proprietary information should be identified and addressed in the cover letter and title page. NYSDOT will determine if such is proprietary and protected from public disclosure.**
- Question 20 Are cost proposals submitted by proponents required to comply with federal acquisition regulation (FAR) part 31 (federal cost principles for-profit entities)?  
**Answer 20 Yes.**
- Question 21 In Section 5.4 (Part III: Administrative Proposal), please confirm that the only forms/certifications that subconsultants need to provide are a) a Vendor Responsibility Questionnaire online certification and b) Attachment 5A: Subconsultant Information.  
**Answer 21 Yes.**

#### Section 7 'Administrative Specifications':

- Question 22 Do you expect this contract to be lump sum, or time and materials?  
**Answer 22 The payment method for contracts resulting from this procurement will be lump sum.**

#### Section 8 Attachments:

##### Draft Contract

- Question 23 Will the State consider substituting the following language in lieu of the current Consultant Liability language in Article 11, so that the indemnification obligation is predicated on a negligence standard?
- Consultant's Liability.* Consultant shall be responsible for all damage to life and property due to intentional acts, negligent acts, errors or omissions of the Consultant, its sub-contractors, or employees in the performance of its service under this Agreement. Further, it is expressly understood that the Consultant shall indemnify and save harmless the STATE from claims, suits, actions, damages, and costs of every name and description to the

extent resulting from the negligent performance of the services or activities performed by Consultant under this Agreement, and such indemnity shall not be limited by reason of enumeration of any insurance coverage herein provided.

Negligent performance of service, within the meaning of this Article, shall include, in addition to negligence founded upon tort, negligence based upon Consultant's failure to meet professional standards and resulting in obvious or patent errors in the progression of its work.

Consultant's responsibility and indemnity shall also include but not be limited to liability resulting from any infringement violation by Consultant of proprietary rights, copyrights, trademarks, or right of privacy arising out of the intellectual property furnished by Consultant under this Agreement, except when attributable to the fault or negligence of the STATE, its officers, employees or agents.

Nothing in this Article or in this Agreement shall create or give to third parties any claim or right of action against Consultant or the STATE beyond such as may legally exist irrespective of this Article or this Agreement.

In case an action shall at any time be brought against the State, asserting a allegation or cause of action for which Consultant is putatively liable, the Consultant shall, at its own cost and expense, and without any cost or expense whatever to the STATE, defend such suit and indemnify and save harmless such parties against all costs and expenses thereof, including reasonable attorney fees and expenses, and promptly pay or cause to be paid any final judgment recovered against the STATE; provided, however, that the STATE gives notice to Consultant and thereafter provide all such information as may from time to time be requested by Consultant or its representatives. The STATE shall furnish to Consultant all such information relating to claims made for injuries, deaths, losses, damages, or destruction of the type covered by this Article as Consultant may from time to time request. The provisions of this Article shall not impinge on the right of any of the State to pursue its own defense in any filed or threatened actions.

**Answer 23**

**The RFP's draft contract remains unmodified regarding this question.**

Question 24 Will the State consider modifying Article 11 to read:  
"CONSULTANT LIABILITY. The CONSULTANT shall be responsible for all damage to life and property due to negligent acts, errors or omissions of the CONSULTANT, his subcontractors, agents or employees, in the performance of his service under this Agreement. Further, it is expressly understood that the CONSULTANT shall indemnify and save harmless the STATE from claims, suits, actions, damages and costs of every name and description resulting from the negligent performance of the services of the CONSULTANT under this Agreement, and such indemnity shall not be limited by reason of enumeration of any insurance coverage herein provided. Negligent performance of service, within the meaning of this Article, shall include, in addition to negligence founded upon tort, negligence based upon the CONSULTANT's failure to meet professional standards and resulting in obvious or patent errors in the progression of his work. Nothing in this Article or in this Agreement shall create or give to third parties any claim or right of action against the CONSULTANT or the STATE beyond such as may legally exist irrespective of this Article or this Agreement"? The State has agreed to this in other contracts as it more accurately aligns with what professional services consultants can obtain in the way of insurance.

**Answer 24 The RFP's draft contract remains unmodified regarding this question.**

Question 25 Will the State consider modifying Article 12, Section 1.A to read:

*Coverage Types and Policy Limits.* The types of coverage and policy limits required from the Consultant are specified in Section 2, Insurance Requirements, below. ~~Insurance shall apply separately on a per job or per project basis.~~

**Answer 25 The RFP's draft contract remains unmodified regarding this question.**

Question 26 Will the State consider deleting the following sentence from Article 12, Section C:

In addition, if required by the Department, the Consultant shall deliver to the Department, within ten (10) business days of such request, a copy of any or all policies of insurance not previously provided, certified by the insurance carrier as true and complete.

**Answer 26 The RFP's draft contract remains unmodified regarding this question.**



Question 27

Will the State consider modifying Article 12, Section E to read:

The commercial general liability and ~~protective~~ commercial automobile liability insurance policies shall provide primary and non-contributory coverage to the DEPARTMENT for any claim arising from the CONSULTANT'S work under this CONTRACT, or as a result of the CONSULTANT'S activities.

**Answer 27**

**The RFP's draft contract remains unmodified regarding this question.**

Question 28

Will the State consider modifying Article 12, Section F to read:

As to every type and form of insurance coverage required from the Consultant except professional liability insurance, there shall be no right of subrogation against the State of New York/New York State Department of Transportation, its agents or employees. To the extent that any of Consultant's policies of insurance prohibit such a waiver of subrogation, Consultant shall secure the necessary permission to make this waiver.

**Answer 28**

**The RFP's draft contract remains unmodified regarding this question.**

Question 29

Will the State consider modifying Article 12, Section G to read:

~~At least ten (10) calendar days p~~Prior to the expiration of any policy required by this CONTRACT, evidence of renewal or replacement policies of such insurance with terms no less favorable to the DEPARTMENT than the expiring policies shall delivered to the DEPARTMENT ~~in the manner required for service of notice in Section C—Certificates of Insurance/Notices above.~~

**Answer 29**

**The RFP's draft contract remains unmodified regarding this question.**

Question 30

Will the State consider modifying Article 12, Section H to read:

Self insured retentions and deductibles shall be approved by NYSDOT which approval shall not be unreasonably withheld. ~~Consultants utilizing self-insurance programs are required to provide a description of the program for Department approval. Collateralized deductible and self-insured retention programs administered by a third party may be approved. Except as may be specifically provided in the Contract Documents of a particular project, Consultant administered insurance deductible shall be limited to the amount of the bid deposit or \$100,000, whichever is less. Security is not required if it is otherwise provided to an administrator for an approved risk management program. The Department will not accept a self-insured retention program without security being posted to assure payment of both the self-insured retention limit and the cost of adjusting claims. The Consultant shall be solely responsible for all claim expense and loss payments within any permitted deductible or self-insured retention. If the Consultant's deductible in a self-administered program exceeds the amount of the bid deposit, the Consultant shall furnish an irrevocable Letter of Credit as collateral to guarantee its obligations. Such Letter of Credit or other collateral as may be approved by Department must be issued by a guarantor or surety with an AM Best Company rating of "A minus" or higher. If, at any time during the term of this agreement, the Department, in its sole discretion, determines that the Consultant is not paying its deductible, it may require the Consultant to collateralize all or any part of the deductible or self-insured retention on any or all policies of insurance or, upon failure to promptly do so, the same may be withheld from payments due the Consultant.~~

Answer 30

**The RFP's draft contract remains unmodified regarding this question.**

Question 31

Will the State consider modifying Article 12, Section J to allow prime consultants to have flexibility in determining which types and amounts of insurance to require of subconsultants?

Answer 31

**The RFP's draft contract remains unmodified regarding this question.**

- Question 32 Will the State consider adding the following paragraph to Article 28 to allow for a cure period?  
Opportunity to Cure. In the event of Suspension of Work for Non-Responsibility or Termination for Non-Responsibility, NYSDOT shall provide not less than fourteen days written notice to Consultant during which time Consultant may cure the circumstances giving rise to the determination by NYSDOT of non-responsibility.
- Answer 32 **The RFP's draft contract remains unmodified regarding this question.**
- Question 33 Will the State consider modifying the first sentence of Article 34 in order to clarify that it is relevant only to staff working on this project, so that it reads:  
The CONSULTANT and its subconsultants/subcontractors shall not ~~engage~~ assign to perform services under this CONTRACT any person who is, or has been at any time, in the employ of the STATE to perform services in violation of the provisions of the New York Public Officers Law, other laws applicable to the service of STATE employees, and the rules, regulations, opinions, guidelines, or policies promulgated or issued by the New York State Joint Commission on Public Ethics, or its predecessors (collectively the "Ethics Requirements").
- Answer 33 **The RFP's draft contract remains unmodified regarding this question.**
- Question 34 Will the State consider modifying the Order of Precedence in Article 3 such that the Consultant's Proposal controls over the terms of the RFP.
- Answer 34 **The RFP's draft contract remains unmodified regarding this question.**
- Question 35 Will the State confirm that Article 35, IT Project Requirements, is not likely to be applicable to services performed under this agreement?
- Answer 35 **Article 35 presents IT project work requirements for any IT project work directed by NYMTC for the selected consultant (or team of consultants) to perform and deliver while under a resulting PSA5 agreement.**
- Question 36 Does any work performed for Lot 2 and Lot 3 qualify as new IT project development or new IT application developed, especially in terms of enhancement and/or support services under subsection 1 of Article 35?
- Answer 36 **Please see answer to Question 35.**

Question 37 Will the State consider deleting Appendix D, or otherwise confirm that the Information Technology Infrastructure Requirements are not likely to be applicable to the services performed under this agreement?

**Answer 37 Please see answer to Question 35.**

**Attachment 12:**

Question 38 Regarding Attachment 12. Is it necessary to complete this attachment for ALL key personnel or only the proposed project manager per lot?

**Answer 38 Please see answer to Question 14.**

Question 39 For Attachment 12, can we use NYMTC staff as references?

**Answer 39 Yes.**

**Attachment 14:**

Question 40 Please confirm that for lots 1 and 3 that you would like a Level I for the role as described on RFP pages 109 and 114 respectively, at 1,600 hours each.

**Answer 40 The annual level of effort indicated in the Attachment 13: Cost Proposal, for each Job Category and Level, is for cost evaluation purposes only. The actual annual level of effort for Task Assignments under a PSA agreement for the Lot, by Job Category and Level, will be determined through negotiated Task Assignment Requests.**

Question 41 For Lot 2 - Data Collection, Monitoring and Analysis, will the required tasks include collecting traffic volume counts or turning movement data in the field?

**Answer 41 No.**

Question 42 For Lot 2, what types of data has NYMTC captured historically?

**Answer 42 NYMTC collects, stores, and analyzes a wide variety of data to support NYMTC's planning processes, including information on travel behavior characteristics, travel demand modeling, travel monitoring, etc. The [Data and Modeling](#) section on the NYMTC website (which may be accessed by clicking on the provided hyperlink) provides a detailed list of processes and associated data types.**

- Question 43 For Lot 2, will the contractor be expected to execute all data collection for NYMTC during the contract period, or will internal NYMTC resources and/or other third-party entities also be capturing or providing data in parallel? If a joint effort, what data should the contractor expect to be focused on?
- Answer 43 **As described in the RFP's description for Lot 2, NYMTC staff collects, stores and analyzes data for regional planning products and reports. In general, NYMTC staff will provide the applicable data to the on-call consultant team for analysis. NYMTC staff generally captures data from various transportation agencies, public websites, and third-party entities. NYMTC staff will make the data available to the consultant if purchased from a third-party.**
- Question 44 Please clarify, does NYMTC require on-call or on-site support services for Lot 2: Data Collection, Monitoring and Analysis process.
- Answer 44 **Lot 2: Data Collection, Monitoring and Analysis requires on-call support services. The RFP has been modified with regard to this question.**
- Question 45 For Lot 3, what versions of ArcGIS, TransCAD and Tableau are in use now?
- Answer 45 **ArcGIS – 10.7.1  
TransCAD – 8.0  
Tableau – The contractor will have access to the latest on-line version of Tableau Creator.**
- Other Questions:**
- Question 46 Can NYMTC confirm that working on these agreements will not preclude my firm from future work on NYSDOT projects?
- Answer 46 **NYMTC and NYSDOT confirm that a consultant's work on a PSA5 agreement will not preclude future work on NYSDOT projects.**
- Question 47 Will there be interviews for the top candidates, and when will those interviews take place?
- Answer 47 **There will be no interviews conducted for this procurement.**
- Question 48 For embedded staff candidates, can we identify a staff person who has accepted job offer but has yet to start work?
- Answer 48 **Yes.**

**End of Round 1 Questions**